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09/397,491	09/15/1999	STANISLAV KHIRMAN	NARSP003	8814

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EXAMINER	
NEURAUTER, GEORGE C	

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/397,491	KHIRMAN ET AL.	
	Examiner	Art Unit	
	George Neurauter	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 29-42 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 29-42 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 29-42 have been considered but are moot in view of the new ground(s) of rejection.

In regards to the Applicant's argument as to whether Iwamura discloses redirecting the data signal to a third device in response to the pre-set credit parameter being less than a predetermined value, the third device allowing for a re-setting of the pre-set credit parameter to a new pre-set credit value comprising a value greater than or equal to the predetermined value, Iwamura does in fact disclose this limitation as originally claimed. As recited in the previous Office Action, Iwamura discloses that a user request is redirected to a third device, allowing the resetting of the pre-set credit parameter in the case of the pre-set credit parameter being less than a predetermined value [column 6, lines 20-30]. Iwamura further distinguishes this limitation wherein the third device is clearly separate from the user terminal [Figure 3, items 10 and 20].

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 29-42 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 29 and 36 recite the limitation "...such that the detector device does not introduce a point of failure if the detector device becomes inoperable". This limitation is not found in the specification and does not enable one skilled in the art to use the invention.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 29-42 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: how the method will operate if the detector device becomes inoperable.

Claims 29 and 36 recite the limitation "...such that the detector device does not introduce a point of failure if the detector device becomes inoperable". The Examiner finds this language to be incomplete since if the detector device becomes inoperable as claimed, there is no possible way the invention can operate as claimed since the detector device is the device on which the method is performed. Therefore, the invention must be omitting essential method steps in order for the detector device not to introduce a point of failure as claimed and renders the claims and their dependent claims unclear.

In view of the claims being rejected under 35 USC 112, the Examiner cannot reasonably interpret the scope of the claims and therefore all limitations referenced above will not be examined.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 29-31, 36-38 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brothers et al. [US Patent 6 438 125 B1] in view of Ishikawa et al. [US Patent 6 343 284 B1]

Regarding claim 29, Brothers discloses a method on a detector device for controlling access to information on a network including a plurality of interconnected devices, the detector device coupled to the network between a first device and a second device [Figure 2; column 2, lines 17-46], the method comprising:

monitoring a request signal from the first device for data on the second device in the network [column 2, lines 47-64] and determining whether a user is permitted access to the data [column 4, lines 5-51, specifically lines 20-24].

Brothers does not expressly disclose wherein the request signal includes a user identification parameter or a user identified by the user identification parameter.

Brothers also does not expressly disclose comparing a pre-set credit parameter associated with the user with a pre-determined value associated with the data to determine permission to access the data.

Ishikawa discloses wherein a user identification parameter is used on a detector device to identify and authenticate a user after a request for data is sent from a first device to the second device and to determine whether a user is permitted access to the data on a second device [column 8, line 43-column 9, line 10].

Ishikawa discloses, on a detector device, comparing a pre-set credit parameter associated with the user with a pre-determined value associated with the data to determine permission to access the data [column 10, lines 25-27; column 10, line 64-column 11, line 11].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method on a detector device as described in Brothers with the user identification parameter that identifies a user and comparing a pre-set parameter associated with the user with a predetermined value associated with the data to determine permission to access data as described in Ishikawa. Ishikawa discloses that using the user identification parameter as described above introduces a specific advantage of not allowing the user to access data by providing a user identification parameter until the user is authenticated [column 7, lines 26-30]. Ishikawa also discloses that the method described above introduces a specific advantage of allowing secret information such as a password to be passed directly to a detector device without possibly being obtained by an invalid content server [column 7, lines 31-35].

Based on the nexus regarding the combination of teachings of Ishikawa and Brothers, the fact that Ishikawa and Brothers are considered to be analogous art because the references are

within a similar problem solving area for authenticating users on a detector device, and the specific advantages the invention of Ishikawa introduces to the art, one of ordinary skill in the art would find it obvious to modify Ishikawa to include the user identification parameter to be included within the user's request for data because the method of sending a user identification parameter with the user's request for data as claimed by the Applicant would be considered to be within the scope of the invention of Ishikawa and considered an obvious variation of the invention of Ishikawa. It also would have been obvious to combine the modification and the method of comparing credit parameters with the teachings of Brothers because Ishikawa discloses the method would enable a specific user to access information based on a monetary basis, enabling the provider of services to be compensated for providing helpful services to a user [column 2, lines 25-29].

Therefore, it would have been obvious to achieve the limitations as recited in claim 29.

Regarding claim 30, Brothers and Ishikawa disclose a method of controlling access of claim 29.

Ishikawa discloses a method further comprising providing access to the data in response to the user having permission to access the data and the pre-set credit parameter being greater than or equal to a predetermined value [column 10, line 64-column 11, line 11, specifically column 10, line 66-column 11, line 2 and column 11, lines 10-11].

Claim 30 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 29 also applies to claim 30.

Regarding claim 31, Brothers and Ishikawa disclose a method of controlling access of claim 29.

Ishikawa discloses a method further comprising preventing access to the second device in response to the pre-set credit parameter being less than or equal to a predetermined value [column 9, lines 7-10; column 10, line 64-column 11, line 11, specifically column 11, line 2-5].

Claim 31 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 29 also applies to claim 31.

Regarding claim 36, Brothers discloses a network-based billing method on a detector device for providing access to resources on a network, the detector device coupled to the network [Figure 2; column 2, lines 17-46], the method comprising:

monitoring a data signal from a device on a network, the data signal including a request for a resource [column 2, lines 47-64] and determining whether a user is permitted access to the resource [column 4, lines 5-51, specifically lines 20-24].

Brothers does not expressly disclose a user idenitified by a user identification or associating a user identification with the data signal. Brothers also does not expressly disclose identifying a cost for accessing the resource, identifying a credit balance for the user identification, or comparing the credit balance with the cost to determine access to the resource.

Ishikawa discloses a network-based billing method on a detector device, the method comprising:

wherein a user identification parameter is used on a detector device to identify and authenticate a user after a request for data is sent from a first device to the second device and to determine whether a user is permitted access to the data on a second device [column 8, line 43-column 9, line 10];

identifying a cost for accessing the resource [column 10, lines 25-27; column 10, line 64-column 11, line 11, specifically column 10, line 66-column 11, line 2];

identifying a credit balance for the user identification [column 10, line 64-column 11, line 11, specifically column 10, lines 64-66]; and

comparing the credit balance with the cost to determine access to the resource [column 10, lines 25-27; column 10, line 64-column 11, line 11, specifically column 10, line 66-column 11, line 2].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method on a detector device as described in Brothers with the user identification parameter that identifies a user, identifying a cost for accessing a resource, identifying a credit balance for the user identification, and comparing the credit balance with the cost to determine access to the resource as described in Ishikawa. Ishikawa discloses that using the user identification parameter as described above introduces a specific advantage of not allowing the user to access data by providing a user identification parameter until the user is authenticated [column 7, lines 26-30]. Ishikawa also discloses that the method described above introduces a specific advantage of allowing secret information such as a password to be passed directly to a detector device without possibly being obtained by an invalid content server [column 7, lines 31-35].

Based on the nexus regarding the combination of teachings of Ishikawa and Brothers, the fact that Ishikawa and Brothers are considered to be analogous art because the references are within a similar problem solving area for authenticating users on a detector device, and the specific advantages the invention of Ishikawa introduces to the art, one of ordinary skill in the art

would find it obvious to modify Ishikawa to include the user identification parameter to be included within the user's request for data because the method of sending a user identification parameter with the user's request for data as claimed by the Applicant would be considered to be within the scope of the invention of Ishikawa and considered an obvious variation of the invention of Ishikawa.

It also would have been obvious to combine the modification and the method of identifying and comparing credit parameters with the teachings of Brothers because Ishikawa discloses the method would enable a specific user to access information based on a monetary basis, enabling the provider of services to be compensated for providing helpful services to a user [column 2, lines 25-29].

Therefore, it would have been obvious to achieve the limitations as recited in claim 36.

Claims 37 and 38 are rejected under 35 USC 103(a) since claims 37 and 38 contain the same limitations as recited in claim 30 and 31 respectively.

Regarding claim 42, Brothers and Ishikawa disclose the method of claim 36.

Brothers discloses the method further comprising passing the data signal to a second device having the resource [column 2, lines 17-24, specifically lines 20-24].

9. Claims 32, 35, and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brothers et al. and Ishikawa et al. as applied to claims 29 and 36 above, and further in view of Iwamura et al. [US Patent 6 272 535 B1].

Regarding claim 32, Brothers and Ishikawa disclose the method of claim 29.

Brothers and Ishikawa do not expressly disclose the method further comprising re-directing the data signal to a third device in response to the pre-set credit parameter being less

than a predetermined value, the third device allowing for a re-setting of the pre-set credit parameter to a new pre-set credit value comprising a value greater than or equal to the predetermined value, however, Brothers does disclose redirecting traffic to another device when a criteria is met [column 2, lines 17-24].

Iwamura discloses the method further comprising re-directing a data signal to a third device in response to a pre-set credit parameter being less than a predetermined value, the third device allowing for a re-setting of the pre-set credit parameter to a new pre-set credit value comprising a value greater than or equal to the predetermined value [column 4, lines 14-20 and 37-43; column 6, lines 20-30].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method as described in Brothers and Ishikawa regarding claim 29 with the method of redirecting a data signal to a third device for resetting of the pre-set credit parameter as described in Iwamura. Iwamura discloses that the purpose of the invention is to authorize data access to data by a user based on a criterion [column 2, lines 44-67].

Based on this nexus between Iwamura and the teachings of Brothers and Ishikawa and the fact that Iwamura is considered to be analogous art with respect to Brothers and Ishikawa because the references are within a particular problem-solving area such as restricting access to data by users, one of ordinary skill in the art would have found it to obvious to combine the teachings of Iwamura with the teachings of Brothers and Ishikawa because Iwamura discloses that providing a user with the option to reset the preset credit parameter by redirection to another device such as the user's bank would save the user time by allowing the user to pay for more credit and immediately access data [column 6, lines 20-30, specifically lines 27-30].

Therefore, it would have been obvious to achieve the limitations as described in claim 32.

Regarding claim 35, Brothers and Ishikawa disclose the method of claim 29.

Iwamura discloses a method further comprising providing access to a second data that does not require a credit value in response to one of the pre-set credit value being less than or equal to the pre-determined value or the user not having permission to access the data corresponding to the request signal [column 20, lines 62-67].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method as described in Brothers and Ishikawa regarding claim 29 with the method of providing access to a second data as described in Iwamura. Based on the nexus regarding combining the references of Brothers, Ishikawa, and Iwamura as described above regarding claim 32, one of ordinary skill in the art would have found it obvious to combine the teachings of Brothers, Ishikawa and, Iwamura because Iwamura discloses that providing access to a second data would provide the specific advantage of providing a lower quality of data for the purposes of advertising [column 20, lines 62-67, specifically lines 65-67]. Therefore, it would have been obvious to achieve the limitations as described in claim 35.

Claims 39 and 40 are rejected under 35 USC 103(a) since claims 39 and 40 contain the same limitations as recited in claims 32 and 35 respectively.

10. Claims 33-34 and 41 rejected under 35 U.S.C. 103(a) as being unpatentable over Brothers et al. and Ishikawa et al. as applied to claims 29 and 36 above, and in further view of Iwamura et al. and "Some FAQs about Usage-Based Pricing" (hereon referred to as "Pricing").

Regarding claim 33, Brothers and Ishikawa disclose the method of claim 29.

Ishikawa discloses a method wherein the predetermined value is one from a group comprising a positive monetary value [column 10, lines 25-27; column 12, lines 56-58].

The motivation to combine the references of Brothers and Ishikawa regarding claim 29 also applies to this claim.

Brothers and Ishikawa do not expressly disclose wherein the predetermined value comprises a positive time value.

Iwamura discloses a method wherein the predetermined value is one from a group comprising a positive time value [column 22, lines 13-15].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method as described in Brothers and Ishikawa regarding claim 29 with the positive time value as described in Iwamura. Iwamura discloses that a positive time value provides the specific advantage of measuring the amount of time using a particular resource such as a multimedia movie [column 22, lines 34-46].

Based on the nexus regarding the combination of Iwamura with the teachings of Brothers and Ishikawa as described above regarding claim 32 and the specific advantages of a positive time value as disclosed in Iwamura, one of ordinary skill in the art would have found it obvious to combine the teachings of Brothers, Ishikawa, and Iwamura because Iwamura discloses providing a positive time value to provide access to data would allow a user to watch a long movie in installments and therefore accommodate the user [column 22, lines 34-46, specifically lines 44-46].

Brothers, Ishikawa, and Iwamura do not expressly disclose whether a bandwidth value, a quality of service value, or a content rating may be used as a predetermined value.

"Pricing" discloses that a bandwidth value [page 5, "What are Smart Markets?"], a quality of service value [page 6, "What About Pricing Multiple Qualities of Service?"], and a content rating [page 6, "What Are Other Proposals?"] may be used as predetermined values.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method as described in Brothers, Ishikawa, and Iwamura as described above with the bandwidth value, quality of service value, and content rating as described in "Pricing". "Pricing" discloses that providing predetermined values for access to a network allows the specific advantage of allowing the user to pay for prioritized resources and restrict access based on the priority of data being passed into the network [page 1, "Why is usage-based pricing desirable?"]. Based on this nexus regarding restricting network access based on predetermined criteria as disclosed in Brothers, Ishikawa, and Iwamura and the specific advantages disclosed in "Pricing", one of ordinary skill in the art would have found it obvious to combine the teachings of Brothers, Ishikawa, Iwamura, and "Pricing" because the bandwidth value, quality of service values, and content ratings would allow the network to prioritize data to reduce congestion at a content server and allow network capacity to expand [page 1, "Why is usage-based pricing desirable?"].

Therefore, it would have been obvious to achieve the limitations as described in claim 33.

Regarding claim 34, Brothers, Ishikawa, Iwamura, and "Pricing" disclose the method of claim 33.

Brothers and Ishikawa do not expressly disclose allowing access to a group comprised of voice data, video data, and a real-time application in response to at least one of the bandwidth value or quality of service value being greater than or equal to a threshold value.

Iwamura discloses a method further comprising allowing access to one from a group comprised of voice data, video data, and a real-time application in response to a value being greater than or equal to a threshold value [column 4, lines 1-6; column 5, lines 35-40].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method as described in Brothers, Ishikawa, Iwamura, and "Pricing" regarding claim 33 with the method of allowing access to one of a group of data as described in Iwamura. The method of allowing access to a specific type of data as disclosed in Iwamura would have been obvious to one of ordinary skill in the art because data such as voice, video, and real-time applications are well known and used in the art as evidenced by Iwamura and one of ordinary skill would have appreciated allowing access to these specific types of data.

Brothers, Ishikawa, and Iwamura fail to disclose whether the value that is greater than or equal to a threshold value comprises at least one of bandwidth or quality of service values.

"Pricing" discloses the use of bandwidth values [page 5, "What are Smart Markets?"] and quality of service values [page 6, "What About Pricing Multiple Qualities of Service?"] in allowing access to data within networks.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method as described in Brothers, Ishikawa, and Iwamura with the use of bandwidth values and quality of service values as described in "Pricing". "Pricing" discloses the use of real-time applications, voice data, and video data being used on a network [page 9, "5. How Do We Keep Things The Way They Were?"]. "Pricing" also discloses that networks have bandwidth and quality of service values to prioritize usage of a network in order to deliver access to those willing to pay the cost for accessing the network resources [page 1, "Why is usage-based

pricing desirable?"]. Based on these nexuses regarding the combination of the teachings of "Pricing" with the teachings of Brothers, Ishikawa, and Iwamura and the specific advantages described above in "Pricing", one of ordinary skill in the art would have found it obvious to combine the teachings of Brothers, Ishikawa, Iwamura, and "Pricing" because the bandwidth value and quality of service values would allow the network to prioritize data to reduce congestion at a content server and allow network capacity to expand [page 1, "Why is usage-based pricing desirable?"].

Therefore, it would have been obvious to achieve the limitations as described in claim 33.

Claim 41 rejected under 35 USC 103(a) since claim 41 contain the same limitations as recited in claim 33.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following US Patents teach the state of the art in restricting user access to a data network:

US Patent 6 286 029 B1 to Delph;

US Patent 5 870 546 A to Kirsch.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Neurauter whose telephone number is 703-305-4565. The examiner can normally be reached on Mon-Fri 8am-4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 703-308-5221. The fax phone numbers for the

organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-746-7240.

gcn
November 14, 2002

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100